

Shop Talk at Thirty

By Robert U. Brown

Under the leadership of the Inter-American Press Association the press of this hemisphere has been successful in obtaining some important revisions in the proposed Draft Convention on Freedom of Expression, Information and Investigation under consideration by the Organization of American States.

The Inter-American Commission on Human Rights, at its last meeting in March, examined opinion advanced by the governments of Chile, Venezuela and the United States with respect to the first draft. It should be noted that the IAPA had taken a strong stand against many provisions of the Draft Convention, stating it would do more harm than good in the area of freedom of expression and freedom of the press, and its position had been communicated to the OAS and the national governments in this hemisphere. The changes were those proposed by IAPA.

In its present form the Draft will be submitted to the Second Special Inter-American Conference.

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Eliminated from the new draft is the controversial "right of reply" provision which had stated:

"The contracting states have the right to correct or reply to a news report or dispatch published in any of them which misrepresents the truth, or in some way impairs the dignity or prestige of the claimant state or tends to disturb the peaceful relations between the nations of the hemisphere.

"Every person will have the right to correct or reply to information or opinions prejudicial to him that have been expressed via the information media by another person or entity in any contracting state.

"The correction or reply shall be published gratuitously whenever the information which motivated it appeared, following the procedure established by law, apart from the clarification and determination of any liabilities incurred."

That section is "out" by unanimous decision of the Commission.

There have been some other changes in wording and phraseology and one important sentence has been added. This appears at the end of the provision which says the exercise of these "rights and freedoms" is

subject only to those laws which are necessary "to uphold national security, territorial integrity, public order," etc. The old Draft said "in no case, however, shall such formalities, conditions, or restrictions represent an abuse or distortion of power that shall prevent or restrict the legitimate exercise of such rights and freedoms," to which has been added, "nor may they be used as the basis for restricting the right to criticize the government." Nevertheless, the section is a colossal "loop-hole."

There is also clarification of the language which says "this Convention shall neither limit nor modify the greater facilities for the exercise of the rights and freedoms contained herein that are granted in the law of any contracting state," etc.

One controversial section that remains contains the ambiguous phrase that measures to suspend compliance may be suspended "in time of war or any other grave national emergency." That ambiguity is subject to abuse, in our opinion.

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The new Draft Convention reads as follows:

Article I

The Contracting States, under the terms of this Convention, shall guarantee to the inhabitants of their respective territories the right to express their thoughts and opinions freely, as well as freedom of information and investigation.

Article II

Everyone has the right to express and freely disseminate his thoughts and opinions orally or in writing, or to employ, at his choice, printing, lithography, painting, sculpture, cartoons, engraving, the press, radio, television, films, public address systems, or any other medium utilized or useful for the exercise of this right.

The exercise of this right precludes prior censorship, guarantee, or pledge.

Article III

Everyone shall be free to seek, receive and communicate, without governmental or other interference, information and opinions from various sources in oral, written, printed, or illustrated form, or by any other method presently established or that may be established.

Article IV

No Contracting State shall regulate or control the use or possible use of any means of communication in a manner that amounts to discrimination for reasons of political ideas, race, sex, language, or religion.

Article V

The Contracting States agree to respect, enforce respect for, and promote freedom of scientific, technical and artistic investigation and, in general, all forms of cultural investigation.

Article VI

The Contracting States undertake to respect the right of free access to official and unofficial news sources equally for all journalists and news agencies, national and foreign, provided that, with respect to the latter, they are duly accredited for the performance of their professional duties in accordance with the law of the country where they are stationed.

They also undertake to provide them with facilities for the fulfillment of their professional duties, fully guaranteeing their freedom of action and movement, both in gathering information and in transmitting it inside and outside of the respective country.

Article VII

1. The Contracting States shall grant facilities for the acquisition of newsprint and machinery and supplies for use in the dissemination of ideas, as well as the implements required for radio broadcasting and television, or for dissemination by any other information medium.

2. The Contracting States shall seek the adoption of measures to permit the entry into their respective territories, free of duty and advance permits or other formalities, of all kinds of books, magazines, newspapers, and pamphlets that are not contrary to morality, public order, and the security of the State, and that are not in violation of the copyright and related laws, as well as recordings, films, and other educational materials that are in accord with these same conditions.

Article VIII

Without impairment of the right of all persons to have access to many sources of information, no provision of this Convention shall limit the right of any Contracting State to adopt the measures required:

b. To prevent restrictive or

monopolistic interference or agreements limiting the free flow of information and opinions.

Article IX

The Contracting States agree to introduce in their domestic legislation such amendments as may be necessary for the effective application of the provisions of this Convention, and also undertake to establish effective measures imposing penalties for the criminal conduct of officials or persons who violate the provisions of the Convention.

Article X

The Contracting States undertake to transmit to the Secretary General of the Organization of American States the texts of their legislation relating to the provisions of this Convention, in order that they may be communicated to the other Contracting States.

Article XI

The exercise of the rights and freedoms established in the preceding articles implies duties and responsibilities and may therefore be subject only to such formalities, conditions, or restrictions, clearly defined by law and applied in conformity therewith, as are strictly necessary in a democratic society to uphold national security, territorial integrity, public order, or the prevention of crime, to prevent incitement to racial or religious strife, to protect the health, morals, reputation or rights of others, to prevent the disclosure of confidential information, or to guarantee the impartial administration of justice. In no case, however, shall such formalities, conditions, or restrictions represent an abuse or distortion of power that shall prevent or restrict the legitimate exercise of such rights and freedoms, nor may they be used as the basis for restricting the right to criticize the government.

The Contracting States may regulate for technical necessities the installation and operation of radio and television stations, and any other process for disseminating ideas, which process, by virtue of its nature, may not be used in an unrestricted manner.

Article XII

In time of war or in any other grave national emergency, each Contracting State may adopt measures to suspend compliance with its obligations under this Convention, to an extent and for a duration strictly limited by the requirements of the situation.

Continued

Article XIII

This Convention shall neither limit nor modify the greater facilities for the exercise of the rights and freedoms contained herein that are granted in the law of any Contracting State or in any other convention to which that State may be a party. Neither shall it impair other rights and freedoms related to those contemplated in this Convention that are recognized in the laws of any Contracting State or in any other convention to which the State may be a party.

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